IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17848 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT WATER SUPPLY & SEWERAGE BOARD - Petitioner(s)

Versus

CHHAGANBHAI VEERABHAI - Respondent(s)

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Appearance :

MR MEHUL H RATHOD for Petitioner(s) : 1,

MR TR MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner-Gujarat Water Supply & Sewerage Board has challenged the legality of the award dated 6th October, 2003 passed by Labour Court, Amreli. By the impugned award, the Labour Court was pleased to partially allow the reference of the respondent-workman and set aside the order of his termination dated 28th July, 1987. He was ordered to be reinstated in service with

continuity, however with 50% back-wages.

2. The Labour Court found that the respondent-workman was terminated without following legal procedure. The case of the petitioner that the respondent himself had stopped attending the work and had thereby abandoned his service was not accepted by the Labour Court. It was observed that the employer did not examine any witness to prove that the respondent was called upon to resume duty but he did not. It was further observed that the employer could have written letter to the respondent or even replied to the demand notice of the respondent workman and could have informed him to resume duty immediately. Since these steps were not taken by the petitioner-employer, Labour Court was of the opinion that the petitioner failed to establish the theory of abandonment of service. In view of these conclusions and in view of the finding that the termination was brought about without following legal procedure, the Labour Court was pleased to order reinstatement of the workman with 50% back-wages.

3. In so far as the conclusions of the Labour Court with respect to the case of the petitioner about abandonment of service by the respondent is concerned, I find that the Labour Court did not commit any error. The petitioner employer did not produce any letter or communication made to the respondent calling upon him to resume duties. In response to the demand notice issued by the workman also the employer did not indicate to him that his service is not terminated and that he is called upon to resume duty. No witness were examined to establish otherwise also the abandonment of service by the workman. In that view of the matter, the Labour Court was perfectly justified in observing that the petitioner failed to prove abandonment of service by the workman. It is by now well settled that it is the burden of the employer to prove abandonment of service by the workman. **(see 2004 AIR SCW 5095)**. The declaration that the termination of the respondent was illegal, therefore cannot be faulted.

4. Learned advocate for the petitioner however

pointed that the petitioner had before the Labour Court atleast by filing a written statement on 20th December, 1990 indicated that the respondent workman was not terminated and that the petitioner is still ready and willing to permit him to resume duty. He submitted that thereafter also during the pendency of the reference proceedings, respondent did not make any attempt to resume duty. He, therefore, submitted that directions for payment of 50% back-wages should therefore be properly modified. On the other hand learned advocate Mr.Mishra submitted that even after the passing of the award of the Labour Court, the petitioner did not reinstate the respondent for a substantially long time and only after this Court on 24th December, 2003 granted stay against back-wages only that the respondent was reinstated in service.

5. Considering the above submissions and considering the fact that atleast in the year 1990, the petitioner had shown willingness to reinstate the respondent, I find that directions for payment of 50% back-wages cannot be sustained. At the same time it is equally true that there has been some delay in

reinstating the respondent even after the Labour Court passed the impugned order. Considering all these factors, I find that it would be just and proper to modify the directions for payment of back wages and to provide that the respondent workman shall be entitled to 25% back wages for the intervening period from the date of termination till his reinstatement maintaining however the continuity of service granted by the Labour Court.

6. In the result by partially allowing the petition and upholding the directions of reinstatement with continuity it is provided that the respondent shall be granted 25% backwages instead of 50% as provided by the Labour Court. It is expected that the back wages payable to the respondent pursuant to this order shall be paid to him preferably within a period of two months from the date of receipt of a copy of this order. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

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